Federal Register

Monday,
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Part II

Department of Education

34 CFR Parts 300 and 301

Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities; Final Rule

with disabilities are generally acquainted with these procedures.

Changes: None.

Remedies for Denial of Appropriate Services (§ 300.151(b))

Comment: Many commenters requested retaining current § 300.660(b)(1), regarding the awarding of monetary reimbursement as a remedy for denial of appropriate services. One commenter stated that the regulations should clarify that States continue to have authority to award monetary reimbursement, when appropriate. A few commenters stated that the regulations should clarify that monetary reimbursement is not appropriate for a majority of State complaints. Some commenters stated that removing current § 300.660(b)(1) creates ambiguity and may result in increased litigation because parents may choose to use the more costly and time-consuming due process system if they believe that monetary relief is not available to them under the State complaint system. Some commenters stated that removing current § 300.660(b)(1) implies that monetary reimbursement is never appropriate. A few commenters stated that removing the monetary reimbursement provision in current § 300.660(b)(1) suggests that the Department no longer supports the use of this remedy. A few commenters requested that the regulations clarify that compensatory services are an appropriate remedy when the LEA has failed to provide appropriate services.

Discussion: The SEA is responsible for ensuring that all public agencies within its jurisdiction meet the requirements of the Act and its implementing regulations. In light of the SEA's general supervisory authority and responsibility under sections 612(a)(11) and 616 of the Act, we believe the SEA should have broad flexibility to determine the appropriate remedy or corrective action necessary to resolve a complaint in which the SEA has found that the public agency has failed to provide appropriate services to children with disabilities, including awarding monetary reimbursement and compensatory services. To make this clear, we will change § 300.151 to include monetary reimbursement and compensatory services as examples of corrective actions that may be appropriate to address the needs of the child.

Changes: We have added "compensatory services or monetary reimbursement" as examples of corrective actions in § 300.151(b)(1).

Comment: One commenter stated that the remedies available in § 300.151(b) are silent about whether the complainant may be reimbursed for attorneys' fees and requested clarification as to whether reimbursement is permissible for State complaints. Another commenter requested that the language in section 615(i)(3)(B) of the Act, regarding the awarding of attorneys' fees for due process hearings, be included in the State complaint procedures as a way to limit repetitive, harassing complaints.

Discussion: The awarding of attorneys' fees is not addressed in § 300.151(b) because the State complaint process is not an administrative proceeding or judicial action, and, therefore, the awarding of attorneys' fees is not available under the Act for State complaint resolutions. Section 615(i)(3)(B) of the Act clarifies that a court may award attorneys' fees to a prevailing party in any action or proceeding brought under section 615 of the Act. We, therefore, may not include in the regulations the language from section 615(i)(3)(B) of the Act, as suggested by the commenters, because State complaint procedures are not an action or proceeding brought under section 615 of the Act.

Changes: None.

Minimum State Complaint Procedures (§ 300.152)

Time Limit; Minimum Procedures (§ 300.152(a))

Comment: One commenter suggested changing § 300.152(a)(1), to include situations when the SEA is the subject of a complaint. Another commenter recommended that the State complaint procedures include how the SEA should handle a complaint against the SEA for its failure to supervise the LEA or failure to provide direct services when given notice that the LEA has failed to do so.

Discussion: We do not believe it is necessary to specify in the regulations how the SEA should handle a complaint filed against the SEA because § 300.151 clarifies that, if an organization or individual files a complaint, pursuant to §§ 300.151 through 300.153, that a public agency has violated a requirement of Part B of the Act or part 300, the SEA must resolve the complaint. Pursuant to § 300.33 and section 612(a)(11) of the Act, the term *public agency* includes the SEA. The SEA must, therefore, resolve any complaint against the SEA pursuant to the SEA's adopted State complaint procedures. The SEA, however, may either appoint its own personnel to resolve the complaint, or may make arrangements with an outside party to resolve the complaint. If it chooses to use an outside party, however, the SEA remains responsible for complying with all procedural and remediation steps required in part 300.

Changes: None.

Comment: One commenter suggested that the regulations include language requiring an on-site investigation unless the SEA determines that it can collect all evidence and fairly determine whether a violation has occurred with the evidence provided by the complainant and a review of records.

Discussion: We do not believe the regulations should require the SEA to conduct an on-site investigation in the manner suggested by the commenter because we believe § 300.152(a)(1) is sufficient to ensure that an independent on-site investigation is carried out if the SEA determines that such an investigation is necessary to resolve a complaint. The minimum State complaint procedures in § 300.152 are intended to be broad in recognition of the fact that States operate differently and standards appropriate to one State may not be appropriate in another State. Therefore, the standards to be used in conducting an on-site investigation are best determined by the State.

Changes: None.

Comment: One commenter stated that § 300.152 would allow an unlimited period of time to resolve complaints and requested that the regulations limit the complaint resolution process to 30 days, similar to the procedures when a due process hearing is requested. A few commenters requested that the 60-day time limit be lengthened to 90 days, given that many complaints involve complex issues and multiple interviews with school administrators.

Discussion: Section 300.152 does not allow an unlimited period of time to resolve a complaint. Paragraph (a) of this section provides that an SEA has a time limit of 60 days after a complaint is filed to issue a written decision to the complainant that addresses each allegation in the complaint (unless, under paragraph (b) of this section, there is an extension for exceptional circumstances or the parties agree to extend the timeline because they are engaged in mediation or in other alternative means of dispute resolution, if available in the State). We believe the right of parents to file a complaint with the SEA alleging any violation of Part B of the Act or part 300 to receive a written decision within 60 days is reasonable in light of the SEA's responsibilities in resolving a complaint pursuant to its complaint procedures, and is appropriate to the interest of resolving allegations promptly. In

Exhibit B
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